

David S. Bloch (SBN: 184530)  
blochd@gtlaw.com  
**GREENBERG TRAUIG, LLP**  
101 Second St., Suite 2200  
San Francisco, CA 94105  
T: 415.590.5100 F: 415.707.2010

Colin W. Fraser (SBN: 266876)  
frasercw@gtlaw.com  
**GREENBERG TRAUIG, LLP**  
18565 Jamboree Road, Suite 500  
Irvine, CA 92612  
T: 949.732.6500 F: 949.732.6501

Maura E. Miller (pro hac vice)  
maura.miller@gtlaw.com  
**GREENBERG TRAUIG, LLP**  
One Vanderbilt Avenue  
New York, NY 10017  
T: 212.801.9372 F: 212.801.6400

*Attorneys for Plaintiff Dryft Sciences,  
LLC*

[additional counsel on next page]

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DRYFT SCIENCES, LLC,

Plaintiff,

v.

SWEDISH MATCH NORTH AMERICA  
LLC,

Defendant.

**Case No.** 2:22-cv-05355-SB-MRW

**Hon. Michael R. Wilner**

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

**DISCOVERY MATTER**

☐ Check if submitted without material  
modifications to MRW form

1 Donald L. Ridge (SBN: 132171)  
dridge@clarkhill.com  
2 **CLARK HILL LLP**  
3 555 South Flower Street 24th Floor  
Los Angeles, CA 90017  
4 T: 213.417.5117 F: 213.488.1178

5 Brian Byrne (SBN: 181362)  
bbyrne@cgsh.com  
6 Zachary Tschida (SBN: 344994)  
7 ztschida@cgsh.com  
8 **CLEARLY GOTTLIEB STEEN &**  
9 **HAMILTON LLP**  
10 1841 Page Mill Road  
Palo Alto, CA 94304  
T: 650.815.4100

11 Carl Lawrence Malm (Pro Hac Vice)  
lmalm@cgsh.com  
12 Joseph Allen Bruner (SBN: 332233)  
jbrunner@cgsh.com  
13 **CLEARLY GOTTLIEB STEEN &**  
14 **HAMILTON LLP**  
2112 Pennsylvania Avenue, NW  
15 Washington, DC 20037  
16 T: 202.974.1500 F: 202.974.1999

17 *Attorneys for Defendant*  
18 *Swedish Match North America, LLC*  
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1 Pursuant to Federal Rule of Civil Procedure 26(c), Plaintiff Dryft Sciences,  
2 LLC (“Dryft”) and Defendant Swedish Match North America LLC (“Swedish Match”)  
3 through their respective counsel, have stipulated to and hereby submit this proposed  
4 Stipulated Protective Order.

5 1. INTRODUCTION

6 1.1 PURPOSES AND LIMITATIONS

7 Discovery in this Action is likely to involve production of confidential, proprietary,  
8 or private information for which special protection from public disclosure and from use  
9 for any purpose other than in connection with this Action may be warranted. Accordingly,  
10 the Parties hereby stipulate to and petition the Court to enter the following Stipulated  
11 Protective Order. The Parties acknowledge that this Order does not confer blanket  
12 protections on all disclosures or responses to discovery and that the protection it affords  
13 from public disclosure and use extends only to the limited information or items that are  
14 entitled to confidential treatment under the applicable legal principles. The Parties  
15 further acknowledge this Order does not entitle them to file confidential information under  
16 seal. Local Civil Rule 79-5 sets forth the procedures that must be followed and the  
17 standards that will be applied when a Party seeks permission from the Court to file  
18 material under seal.

19 1.2 GOOD CAUSE STATEMENT

20 This Action is likely to involve sensitive patent, trade secret, customer, product  
21 development, sales, marketing, and pricing information, and other valuable  
22 research, development, commercial, financial, technical, and/or proprietary information  
23 within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure, which must be  
24 protected in order to preserve legitimate business interests. Such proprietary  
25 materials and information, whether designated “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order, consist of, among  
27 other things, business or financial information, information regarding business  
28 practices, or other research, development, or commercial information, information

1 otherwise generally unavailable to the public or that may be privileged or otherwise  
2 protected from disclosure under state or federal statutes, court rules, case decisions, or  
3 common law.

4 The Parties to this Action were or are competitors, and it is important the Parties  
5 are able to produce highly sensitive information on an outside counsel eyes' only basis in  
6 addition to being able to produce confidential information, which may be appropriate  
7 for access by In-House Counsel to facilitate In-House Counsel's ability to oversee  
8 the developments of this Action. The Parties believe a two-tier protective order balances  
9 these competing interests, while protecting the Parties' confidential and sensitive  
10 information that is expected to be produced in this Action.

11 Accordingly, to expedite the flow of information, to facilitate the prompt resolution  
12 of disputes over confidentiality of discovery materials, to adequately protect information  
13 the Parties are entitled to keep confidential, to ensure the Parties are permitted reasonable  
14 necessary uses of such material in preparation for and in the conduct of trial, to address  
15 their handling at the end of the litigation, and to serve the ends of justice, a protective  
16 order for such information is justified in this Action. It is the intent of the Parties that  
17 information will not be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
18 – ATTORNEYS' EYES ONLY" for tactical reasons and that nothing will be so  
19 designated without a good faith belief it has been maintained in a confidential, non-public  
20 manner, and there is good cause why it should not be part of the public record of this  
21 Action.

## 22 2. DEFINITIONS

23 2.1 Action: *Dryft Sciences, LLC v. Swedish Match North America LLC*, 2:22-cv-  
24 05355-SB-MRW (C.D. Cal.).

25 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
26 information or items under this Order.

27 2.3 "CONFIDENTIAL" Information or Items: any information, document, or  
28 thing, or portion of any document or thing, that such Party in good faith believes: (a)

contains proprietary business information or technical information or other confidential research, development, or commercial information within the meaning of Federal Rule of Civil Procedure 26(c), (b) contains information received in confidence from Third Parties that contains proprietary business information or technical information relating to trade secrets or other confidential research, development, or commercial information of such Third Parties within the meaning of Federal Rule of Civil Procedure 26(c), or (c) is entitled to protection under Federal Rule of Civil Procedure 26(c)(1)(G).

2.4 Counsel (without qualifier): Outside Counsel of Record (as well as their support staff) and In-House Counsel.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this Action.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to this Action who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this Action, (2) is not a past or current employee of a Party, and (3) at the time of retention, is not anticipated to become an employee of a Party or a Party’s competitor.

2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: material that contains competitive business or financial information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the Designating Party. HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information and items may include, but are not limited to, sensitive research materials, development and strategic plans, scientific research, customers, pricing and sales information, trade secrets, technical information, technical

1 practices, method, or other know-how, pending but unpublished patent applications,  
2 pricing data, financial data, sales information, customer-confidential information,  
3 agreements or relationships with Third Parties, market projections or forecasts, strategic  
4 business plans, selling or marketing strategies, new product development, testing,  
5 manufacturing costs, or information regarding employees. A two-tiered designation  
6 system is necessary in this Action because (1) the Parties contemplate allowing In-House  
7 Counsel access to certain information and (2) the Parties contemplate production of  
8 sensitive commercial information in addition to sensitive trade secret and other  
9 information related to Parties' intellectual property.

10 2.9 In-House Counsel: attorneys who are employees of a Party to this Action. In-  
11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or other  
13 legal entity not named as a Party to this Action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a Party to  
15 this Action but are (i) retained to represent or advise a Party to this Action and have  
16 appeared in this Action on behalf of that Party or are affiliated with a law firm that has  
17 appeared on behalf of that Party, and includes support staff, or (ii) retained to represent or  
18 advise a Party to the Underlying Litigations and have appeared in the Underlying  
19 Litigations on behalf of that Party or are affiliated with a law firm that has appeared on  
20 behalf of that Party, and includes support staff.

21 2.12 Party: any party to this Action, including all of its officers, directors,  
22 employees, consultants, retained experts, and Outside Counsel of Record (and their  
23 support staffs).

24 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
25 Material in this Action.

26 2.14 Professional Vendor: persons or entities that provide litigation support  
27 services (e.g., stenographers, photocopying, videotaping, interpreting and translating,  
28

exhibit and demonstrative preparation, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.17 Underlying Litigations: *Pinkerton Tobacco Co., LP et al. v. Art Factory AB et al.*, 2:20-cv-01322-SB-MRW (C.D. Cal.); *Pinkerton Tobacco Co., LP v. Kretek Int’l, Inc.*, No. 22-1454 (Fed Cir. Feb. 8, 2022); *Nicotine Pouches and Components Thereof and Methods of Making the Same*, Inv. No. 337-TA-1192; and *Pinkerton Tobacco Co., LP et al. v. Kretek Int’l, Inc. et al.*, No. 2:20-cv-08729-PA-GJS (C.D. Cal.), previously No. 4:20-CV-24-JHM (W.D. Ky.).

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming a part of the public record in this Action; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

Any use of Protected Material at trial will be governed by a separate agreement or order. This Order does not govern the use of Protected Material at trial.



1     4.     DURATION

2             The terms and conditions of this Order shall govern the handling of documents,  
3     depositions, pleadings, exhibits, and all other information exchanged by the Parties in this  
4     Action or provided by or obtained from Non-Parties in this Action. This Order shall apply  
5     regardless of whether such information was produced prior to or after entry of this Order.

6             Even after final disposition of this Action, the confidentiality obligations imposed  
7     by this Order will remain in effect until a Designating Party agrees otherwise in writing  
8     or a court order otherwise directs. Final disposition will be deemed to be the later of (1)  
9     dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final  
10    judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
11    trials, or reviews of this Action, including the time limits for filing any motions or  
12    applications for extension of time pursuant to applicable law.

13    5.     DESIGNATING PROTECTED MATERIAL

14            5.1    Exercise of Restraint and Care in Designating Material for Protection. The  
15    Producing Party's designation of information as "CONFIDENTIAL" or "HIGHLY  
16    CONFIDENTIAL – ATTORNEYS' EYES ONLY" means that such Party believes in  
17    good faith, upon reasonable inquiry, that the information qualifies as such. Each Party or  
18    Non-Party that designates information or items for protection under this Order must take  
19    care to limit any such designation to specific material that qualifies under the appropriate  
20    standards. The Designating Party must designate for protection only those parts of  
21    material, documents, items, or oral or written communications that qualify so that other  
22    portions of the material, documents, items, or communications for which protection is not  
23    warranted are not swept unjustifiably within the ambit of this Order.

24            Mass, indiscriminate, or routinized designations are prohibited. Designations that  
25    are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
26    to unnecessarily encumber the case development process or to impose unnecessary  
27    expenses and burdens on other Parties) may expose the Designating Party to sanctions.



1 Notwithstanding the provision above, a Designating Party using Technology-  
2 Assisted Review (“TAR”) in accordance with the Order Regarding The Production of  
3 Documents and Electronically Stored Information, may bulk designate documents  
4 identified as responsive using TAR as “HIGHLY CONFIDENTIAL – ATTORNEYS’  
5 EYES ONLY.”

6 A Party who has designated information as “CONFIDENTIAL” or “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may withdraw the designation by (a)  
8 written notification to all Parties in the above-captioned action and (b) reproducing the  
9 information with the proper designation (or with no designation).

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that  
12 qualifies for protection under this Order must be clearly so designated before the material  
13 is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents,  
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
17 Producing Party affix at a minimum, the legend “CONFIDENTIAL” or “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected  
19 material.

20 A Party or Non-Party that makes original documents available for inspection need  
21 not designate them for protection until after the inspecting Party has indicated which  
22 documents it would like copied and produced. During the inspection and before the  
23 designation, all of the material made available for inspection will be deemed  
24 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
25 copied and produced, the Producing Party must determine which documents, or portions  
26 thereof, qualify for protection under this Order. Then, before producing the specified  
27 documents, the Producing Party must affix the legend “CONFIDENTIAL” or “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains Protected

1 Material. If only a portion or portions of the material on a page qualifies for protection,  
2 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
3 appropriate markings in the margins).

4 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
5 the Designating Party identify on the record, before the close of the deposition, hearing, or  
6 other proceeding, all protected testimony and specify the level of protection being  
7 asserted. When it is impractical to identify separately each portion of testimony that is  
8 entitled to protection and it appears that substantial portions of the testimony may qualify  
9 for protection, the Designating Party may invoke on the record a right to have up to 30  
10 calendar days after receiving the transcript to identify the specific portions of the  
11 testimony as to which protection is sought and to specify the level of protection being  
12 asserted. Only those portions of the testimony that are appropriately designated for  
13 protection within 30 calendar days after receiving the transcript shall be covered by the  
14 provisions of this Order. Alternatively, a Designating Party may specify, at the deposition  
15 or up to 30 calendar days after receiving the transcript if that period is properly invoked,  
16 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 The use of a document as an exhibit at a deposition shall not in any way affect its  
19 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
20 EYES ONLY.”

21 Transcripts containing Protected Material shall have an obvious legend on the title  
22 page that the transcript contains Protected Material, and the title page shall be followed by  
23 a list of all pages (including line numbers as appropriate) that have been designated as  
24 Protected Material and the level of protection being asserted by the Designating Party.  
25 The Designating Party shall inform the court reporter of these requirements. Any  
26 transcript that is prepared before the expiration of a 30-day period for designation shall be  
27 treated during that period as if it has been designated “HIGHLY CONFIDENTIAL –  
28

1 ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After expiration of  
2 that period, the transcript will be treated only as actually designated.

3 (c) for information produced in some form other than documentary and for any  
4 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
5 the container or containers in which the information is stored the legend  
6 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If  
7 only a portion or portions of the information warrants protection, the Producing Party, to  
8 the extent practicable, will identify the protected portion(s) and specify the level of  
9 protection being asserted.

10 (d) information and documents exchanged in *Certain Nicotine Pouches and*  
11 *Components Thereof and Methods of Making the Same*, ITC Investigation No. 337-TA-  
12 1192, that were designated "Confidential Business Information - Subject to Protective  
13 Order" and reproduced in this Action shall be treated as "HIGHLY CONFIDENTIAL –  
14 ATTORNEYS' EYES ONLY."

15 (e) in the case of interrogatory answers and the information contained therein,  
16 designation shall be made by marking the first page and all subsequent pages containing  
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
18 information with the appropriate legend.

19 5.3 Inadvertent Failures to Designate. A Producing Party's failure to designate a  
20 document, thing, or testimony as "CONFIDENTIAL" or "HIGHLY  
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not constitute forfeiture of a  
22 claim of confidentiality as to that material or any other document, thing, or testimony. The  
23 Producing Party may subsequently inform the Receiving Party of the "CONFIDENTIAL"  
24 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" nature of the disclosed  
25 information, and the Receiving Party shall treat the disclosed information as  
26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
27 upon receipt of written notice from the Producing Party. The Receiving Party shall not be  
28 held liable to the Producing Party for having previously disclosed such re-designated

1 information, but shall undertake reasonable efforts to ensure that the material is treated in  
2 accordance with the provisions of this Order.

### 3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Nothing in this Order shall prevent a Receiving Party  
5 from contending that any or all documents or information designated as  
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
7 have been improperly designated. A Receiving Party may at any time request that the  
8 Producing Party cancel or modify the confidentiality designation with respect to any  
9 document or information contained therein.

10 A Party shall not be obligated to challenge the propriety of any “CONFIDENTIAL”  
11 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation at the time  
12 made, and a failure to do so shall not preclude a subsequent challenge thereto. The Parties  
13 shall use their best efforts to promptly and informally resolve such disputes. If agreement  
14 cannot be reached, the Receiving Party may request that the Court revoke or modify the  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
16 designation. The Party or Parties producing the designated documents shall have the  
17 burden of establishing that the disputed documents are entitled to the designated  
18 treatment. Until such a dispute is resolved, either by the Parties or by direction of the  
19 Court, the Receiving Party shall continue to treat the information at issue consistent with  
20 its current confidentiality designation under this Order. A Party’s failure to contest a  
21 designation of information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY” is not an admission that the information was properly  
23 designated as such.

24 6.2 Meet and Confer. The Challenging Party will initiate the dispute resolution  
25 process (and, if necessary, file a discovery motion) under Local Rule 37-1 et seq. by  
26 providing written notice of each designation it is challenging and describing the basis for  
27 each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
28 notice must recite that the challenge to confidentiality is being made in accordance with

1 this specific paragraph of the Order. The Parties shall attempt to resolve each challenge in  
 2 good faith and must begin the process by confirming directly (in voice to voice dialogue;  
 3 other forms of communication are not sufficient) within 14 calendar days of the date of  
 4 service of notice. In conferring, the Challenging Party must explain the basis for its belief  
 5 that the confidentiality designation was not proper and must give the Designating Party an  
 6 opportunity to review the designated material, to reconsider the circumstances, and, if no  
 7 change in designation is offered, to explain the basis for the chosen designation. A  
 8 Challenging Party may proceed to the next stage of the challenge process only if it has  
 9 engaged in this meet and confer process first or establishes the Designating Party is  
 10 unwilling to participate in the meet and confer process in a timely manner.

11 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
 12 intervention after conducting a meet-and-confer in compliance with Local Rule 37-1, the  
 13 Parties must submit a joint stipulation setting forth the issues, as required by Local Rule  
 14 37-2, within 21 calendar days of the initial notice of challenge or within 14 calendar days  
 15 of the Parties agreeing that the meet-and-confer process will not resolve their dispute,  
 16 whichever is earlier. Under Local Rule 37-2, each written stipulation must be filed and  
 17 served with the notice of the motion.

18 The burden of persuasion in any such challenge proceeding will be on the  
 19 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g. to  
 20 harass or impose unnecessary expenses and burdens on other Parties) may expose the  
 21 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the  
 22 confidentiality designation, all Parties will continue to afford the material in question the  
 23 level of protection to which it is entitled under the Producing Party's designation until the  
 24 Court rules on the challenge.

## 25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 27 disclosed or produced by another Party or by a Non-Party in connection with this Action  
 28 only for prosecuting, defending, or attempting to settle this Action. Specifically, all

1 Protected Material shall be used solely for this case or any related appellate proceeding,  
2 and not for any other purpose whatsoever, including, for example, but not limited to (a)  
3 any business, proprietary, or commercial purpose, (b) any governmental or other legal  
4 purpose, including in connection with any other litigation, proceeding, arbitration, or  
5 claim, absent the consent of the Producing Party or a court order, (c) use in connection  
6 with the prosecution of patent applications, including in connection with the prosecution  
7 of patent applications relating to the subject matter of this Action, (d) use in connection  
8 with any communications with the U.S. Food and Drug Administration, and/or (e) use in  
9 connection with any formulation, scientific research, development, or manufacturing  
10 activities concerning the subject matter of this Action.

11 Notwithstanding the foregoing, the Receiving Party's Outside Counsel that is  
12 permitted to receive and does receive "CONFIDENTIAL" or "HIGHLY  
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be involved in  
14 domestic or foreign post- grant patent prosecution (e.g., *inter partes* review,  
15 reexamination, nullity proceedings, etc.)

16 Protected Material may be disclosed only to the categories of persons and under the  
17 conditions described in this Order. When the Action has been terminated, a Receiving  
18 Party must comply with the provisions of Section 13, below. It is, however, understood  
19 that Counsel for a Party may give advice and opinions to his or her client solely relating  
20 to the above-captioned Action and any appeal therefrom based on his or her evaluation of  
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
22 material, provided such advice and opinions shall not reveal the content of such Protected  
23 Material, except by prior written agreement of Counsel for the Parties or by Order of the  
24 Court. Nothing in this Discovery Confidentiality Order precludes a Producing Party from  
25 using or disseminating its own Protected Material.

26 Protected Material must be stored and maintained by a Receiving Party at a location  
27 and in a secure manner that ensures that access is limited to the persons authorized under  
28 this Order.



1 Nothing in this Order shall prevent a Party or Third Party from redacting from  
 2 documents or things, which otherwise contain relevant, discoverable information, any  
 3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 4 information that is irrelevant to this Action or otherwise not discoverable pursuant to  
 5 FEDERAL RULE OF CIVIL PROCEDURE 26(b). Further, nothing in this Order shall  
 6 prevent a Party or Third Party from redacting from documents or things any information  
 7 that is protected under The Health Insurance Portability and Accountability Act of 1996  
 8 (HIPAA).

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
 10 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
 11 may disclose any information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record, as well as support staff of  
 13 said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 14 information for this Action;

15 (b) Experts (as defined in this Order) of the Receiving Party, as well as the  
 16 Expert’s staff, (1) to whom it is reasonably necessary to disclose the information for  
 17 this Action, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
 18 (Exhibit A), and (3) to whom the procedure set forth in Section 7.4(a), below, have been  
 19 followed;

20 (c) the Court and its personnel;

21 (d) court reporters and their staff;

22 (e) professional jury or trial consultants, mock jurors, and Professional Vendors  
 23 to whom disclosure is reasonably necessary for this Action and who have signed the  
 24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), but no “CONFIDENTIAL”  
 25 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall be  
 26 permitted to remain in the possession of any mock juror;

27 (f) the author or recipient of a document containing the information or a  
 28 custodian or other person who otherwise possessed or knew the information.



1 (g) any deponent, during the course of preparing for a deposition or testimony, or  
2 during the course of a deposition or testimony, may be shown or examined on any  
3 information, document, or thing designated “CONFIDENTIAL” if it appears the witness  
4 authored or received a copy of it in the ordinary course of business, was involved in the  
5 subject matter described therein or is employed by the Producing Party, or if the Producing  
6 Party consents to such disclosure. A deponent who is an officer, director, employee, or  
7 witness designated pursuant to Federal Rule of Civil Procedure 30(b)(6) of a  
8 Producing Party may be shown “CONFIDENTIAL” material of the Producing Party  
9 of which he or she is an officer, director, employee, or witness designated pursuant to  
10 Federal Rule of Civil Procedure 30(b)(6); and

11 (h) any mediator or settlement officer, and their supporting personnel,  
12 mutually agreed upon by any of the Parties engaged in settlement discussions and who  
13 has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

14 (i) any other person with the prior written consent of the Producing Party.

15 (j) up to two designated In-House Counsel of the Receiving Party who either  
16 have responsibility for making decisions dealing directly with the litigation of this Action,  
17 or who are assisting outside counsel in the litigation of this Action, and to whom the  
18 procedures set forth in Section 7.4(b), below, have been followed Confidential  
19 information may be disclosed to In-House Counsel for the sole purpose of assisting in this  
20 Action.

21 It is expressly understood between the Parties that the number of such persons may  
22 be increased by unanimous, written agreement of the Parties to this Action without leave  
23 of the Court, or upon a showing, subject to the approval of the Court, by either Party that  
24 such modification is necessary. It is further agreed that a Party may make a substitution  
25 for any such persons upon a showing of good cause, and any other Party shall have five  
26 (5) business days to object. No Party shall be allowed to use the right of substitution to  
27 circumvent the limits on the number of In-House Counsel allowed to receive  
28 “CONFIDENTIAL” information. The burden of proof shall rest on the objecting Party.

1           7.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 2   Information or Items. Unless otherwise ordered by the Court or permitted in writing by  
 3   the Designating Party, a Receiving Party may disclose any information or item designated  
 4   “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5           (a)    the Receiving Party’s Outside Counsel of Record, as well as support staff of  
 6   said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 7   information for this Action;

8           (b)    Experts (as defined in this Order) of the Receiving Party (1) to whom  
 9   disclosure is reasonably necessary for this Action, (2) who are not employed  
 10   by, consultants to, or otherwise affiliated with a Party (except solely as experts (consulting  
 11   or testifying) in connection with this, or other, litigation), (3) who have signed  
 12   the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) to whom  
 13   the procedure set forth in Section 7.4(a), below, have been followed;

14          (c)    the Court and its personnel;

15          (d)    court reporters and their staff;

16          (e)    professional jury or trial consultants, mock jurors, and Professional Vendors  
 17   to whom disclosure is reasonably necessary for this Action and who have  
 18   signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), but no  
 19   “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 20   information shall be permitted to remain in the possession of any mock juror;

21          (f)    the author or recipient of a document containing the information or a  
 22   custodian or other person who otherwise possess or knew the information;

23          (g)    any deponent, during the course of preparing for a deposition or testimony,  
 24   or during the course of a deposition or testimony, may be shown or examined on any  
 25   information, document, or thing designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 26   EYES ONLY” if it appears the witness authored or received a copy of it in the ordinary  
 27   course of business, was involved in the subject matter described therein or is employed by  
 28   the Producing Party, or if the Producing Party consents to such disclosure. A deponent

1 who is an officer, director, employee, or witness designated pursuant to Federal Rule  
 2 of Civil Procedure 30(b)(6) of a Producing Party may be shown “HIGHLY  
 3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material of the Producing Party of  
 4 which he or she is an officer, director, employee, or witness designated pursuant to Federal  
 5 Rule of Civil Procedure 30(b)(6);

6 (h) any mediator or settlement officer, and their supporting personnel,  
 7 mutually agreed upon by any of the Parties engaged in settlement discussions and who  
 8 has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

9 (i) any other person with the prior written consent of the Producing Party.

10 7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL”  
 11 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
 12 Experts or In-House Counsel.

13 (a) Unless otherwise ordered by the Court or otherwise agreed to in writing by  
 14 the Designating Party, a Party that seeks to disclose to an Expert information that has been  
 15 designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 16 ONLY” must first make a written request to the Designating Party that (1) sets forth the  
 17 full name of the Expert, (2) attaches a copy of the Expert’s current resume, (3) identifies  
 18 the Expert’s current employer(s), (4) identifies (by name and location of court) any  
 19 litigation in connection with which the Expert has offered testimony, including through a  
 20 declaration, report, or testimony at a deposition or trial, during the preceding four years,  
 21 including identification of the parties represented in each case, and (5) any previous or  
 22 current relationship with any of the parties (excluding confidential non-testifying litigation  
 23 consulting, the existence of which is protected by attorney work product immunity);

24 (b) Unless otherwise ordered by the Court or otherwise agreed to in writing by  
 25 the Designating Party, a Party that seeks to disclose to an In-House Counsel information  
 26 that has been designated “CONFIDENTIAL” must first make a written request to the  
 27 Designating Party that (1) sets forth the full name of the In-House Counsel, (2) identifies  
 28 the In-House Counsel’s job title and provides a general description of the In-House

1 Counsel's duties, (3) provides a list of the In-House Counsel's employers for the last ten  
 2 (10) years, and (4) attaches a copy of the signed "Acknowledgment and Agreement to Be  
 3 Bound" (Exhibit A);

4 (c) A Party that makes a request and provides the information specified in  
 5 Section 7.4(a) and/or 7.4(b) may disclose the Protected Material to the identified Expert  
 6 or In-House Counsel unless, within ten (10) calendar days of delivering the request, the  
 7 Party receives a written objection from the Designating Party. Any such objection must  
 8 set forth in detail the grounds on which it is based.

9 (d) A Party that receives a timely written objection shall respond in writing to  
 10 such objection within ten (10) calendar days, and shall state with particularity the grounds  
 11 for designating the individual. If no timely written response is made to the objection, the  
 12 challenged designation will be deemed to be void. If the Designating Party or Third Party  
 13 makes a timely response to such objection, Counsel shall meet and confer with the  
 14 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
 15 agreement within seven calendar days of the written objection. If no agreement is reached,  
 16 the Party seeking to make the disclosure to the Expert or In-House Counsel may file a  
 17 motion as provided by Local Rule 7 seeking permission from the Court to do so. Protected  
 18 Material may not be disclosed to the Expert or In-House Counsel until the dispute is  
 19 resolved.

20 In any such proceeding, the Party opposing the disclosure shall bear the burden of  
 21 proving the risk of harm that the disclosure would entail outweighs the Receiving Party's  
 22 need to disclose the Protected Material to its Expert or In-House Counsel.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation that  
 26 compels disclosure of any information or items designated in this Action as  
 27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"  
 28 that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification will  
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the entity who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or  
5 order is subject to this Protective Order. Such notification will include a copy of this  
6 Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
8 the Designating Party whose Protected Material may be affected.

9 If the Designating Party seeks a protective order within 30 business days of  
10 receiving written notice, the Party served with the subpoena or court order will not produce  
11 any information designated in this Action as “CONFIDENTIAL” or “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court  
13 from which the subpoena or order issued, unless the Party has obtained the Designating  
14 Party’s permission. The Designating Party will bear the burden and expense of seeking  
15 protection in that court of its confidential material. If the Designating Party does not move  
16 for a protective order within 30 business days of receiving written notice, the Party served  
17 with the subpoena or court order may produce the requested material.

18 Nothing in these provisions should be construed as authorizing or encouraging a  
19 Receiving Party in this Action to disobey a lawful directive from another court.

20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
21 THIS ACTION

22 (a) The terms of this Order are applicable to information produced by a Non-  
23 Party to this Action and designated as “CONFIDENTIAL” or “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-  
25 Parties in connection with this Action is protected by the remedies and relief provided by  
26 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
27 from seeking additional protections.  
28

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, while complying with any other Notice obligations that may apply, then the Party will:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 business days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party will not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party will bear the burden and expense of seeking protection in this Court of its Protected Material.

#### 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material and ensure that no further or greater unauthorized disclosure and/or use thereof occurs, (c) inform the person or persons to whom unauthorized disclosures were made of all of the terms of this Order, and (d)



1 request such person(s) to execute the “Acknowledgment and Agreement to Be Bound”  
2 that is attached hereto as Exhibit A.

3 11. INADVERTANT PRODUCTION OF PRIVILEGED OR OTHERWISE  
4 PROTECTED MATERIAL

5 To the extent consistent with applicable law, the inadvertent or unintentional  
6 disclosure of Protected Material that should have been designated as such, regardless of  
7 whether the material was so designated at the time of disclosure, shall not be deemed a  
8 waiver in whole or in part of a Party’s claim of confidentiality, either as to the specific  
9 material or as to any other material or information concerning the same or related subject  
10 matter. Such inadvertent or unintentional disclosure may be rectified by notifying in  
11 writing Counsel for all Parties to whom the material was disclosed that the material should  
12 have been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY” within a reasonable time after disclosure. Such notice shall  
14 constitute a designation of the information, document, or thing as “CONFIDENTIAL” or  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order.

16 The inadvertent production of documents subject to attorney-client privilege or  
17 work product immunity will not waive attorney-client privilege or work product  
18 immunity. In addition, the fact a document was inadvertently produced shall not be used  
19 in any manner as evidence in support of any such alleged waiver of attorney-client  
20 privilege or work product immunity.

21 If a Party has inadvertently produced a document it believes in good-faith is subject  
22 to a claim of attorney-client privilege or work product immunity, the Producing Party shall  
23 make a representation in writing that such documents may be subject to the attorney-client  
24 privilege or work product doctrine. Any such claim by the Producing Party shall be made  
25 with sufficient information to meet the requirements of Federal Rule of Civil Procedure  
26 26(b)(5)(A), including the information subject to the claim, the author, date, address of  
27 recipient of the document (if applicable), the claim of privilege or protection being  
28 asserted, and the basis for that claim of privilege or protection. If a Party has inadvertently



1 produced a document subject to a claim of attorney-client privilege or work product  
2 immunity, upon request, the document and all copies thereof shall be destroyed or returned  
3 promptly, and in no event later than five calendar days after a request is made by the  
4 Producing Party in accordance with Rule 26(b)(5)(B). Moreover, any notes or summaries,  
5 other than those expressly permitted under this section, referring to or relating to any such  
6 inadvertently produced document subject to a claim of attorney-client privilege or work  
7 product immunity shall be destroyed. Nothing herein shall prevent the Receiving Party  
8 from preparing a record for its own use containing the date, author, address(es), and such  
9 other information as is reasonably necessary to identify the document and generally  
10 describe its nature to the Court in any motion to compel production of the document. Such a  
11 record of the identity and nature of the document may not be used for any purpose other  
12 than for preparing and supporting a motion to compel production of that document in this  
13 Action. After the return of the document(s), the Receiving Party may challenge the  
14 Producing Party's claim(s) of attorney-client privilege or work product immunity by  
15 making a motion to the Court.

16 Nothing in this Order shall require disclosure of material that a Party contends is  
17 protected from disclosure by attorney-client privilege, attorney work-product immunity,  
18 or any other applicable form of immunity. This shall not preclude any Party from moving  
19 the Court for an order to disclose such material.

## 20 12. MISCELLANEOUS

21 12.1 Unique Identifier. To avoid any confusion and ensure there is no inadvertent  
22 use of "CONFIDENTIAL" information or "HIGHLY CONFIDENTIAL –  
23 ATTORNEYS' EYES ONLY" information produced in this Action in any related action,  
24 the Parties agree to use a unique Bates stamp (e.g., "-AT") for documents produced in  
25 this Action so that they can be readily identified and distinguished from documents  
26 production in any related action.

27 12.2 Discovery Rules Remain Unchanged. Nothing herein shall alter or change in  
28 any way the discovery provisions of the FEDERAL RULES OF CIVIL PROCEDURE,

1 the Local Rules of Civil Practice and Procedure of the United States District Court for the  
2 Central District of California, or the Court's Scheduling Order. Identification of any  
3 individual pursuant to this Order does not make that individual available for deposition or  
4 any other form of discovery outside of the restrictions and procedures of the FEDERAL  
5 RULES OF CIVIL PROCEDURE, the Local Rules of Civil Practice and Procedure of the  
6 United States District Court for the Central District of California, or the Court's  
7 Scheduling Order. Nothing in this Order shall be construed to require a party to produce  
8 or disclose information not otherwise required to be produced under the applicable rules  
9 or orders of this Court.

10 12.3 Right to Further Relief. Nothing in this Order abridges the right of any person  
11 to seek its modification by the Court in the future.

12 12.4 Right to Assert Other Objections. By stipulating to the entry of this Protective  
13 Order, no Party waives any right it otherwise would have to object to disclosing or  
14 producing any information or item on any ground not addressed in this Stipulated  
15 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
16 evidence of any of the material covered by this Protective Order. Nothing in this Order  
17 shall be deemed to bar or preclude any producing Party from seeking such additional  
18 protection, including, without limitation, an order that certain information may not be  
19 discovered at all.

20 12.5 Filing Protected Material. Without written permission from the Designating  
21 Party or a court order secured after appropriate notice to all interested persons, a Party  
22 may not file in the public record in this Action any Protected Material. In order to file  
23 Protected Material, Parties must do one of the following: (1) with the consent of the  
24 Designating Party, file only a redacted copy of the Protected Material; (2) where  
25 appropriate (e.g., in connection with discovery and evidentiary motions) provide the  
26 Protected Material solely for *in camera* review; or (3) file such Protected Material under  
27 seal with the Court consistent with the sealing requirements set forth in Local Rule 79-5.  
28 If the Party's request to file Protected Material under seal is denied by the Court with

1 prejudice, then the Receiving Party may file the information in the public record unless  
2 otherwise instructed by the Court.

3 If a Party files Protected Material without a motion to seal, the Designating Party or  
4 any Party to this action may move that the Court place the designated materials under seal.  
5 The Clerk of the Court is directed to comply with any such request until such time as the  
6 motion is decided.

7 12.6 Entering into, producing and/or receiving “CONFIDENTIAL” information  
8 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or  
9 otherwise complying with the terms of this Order shall not:

10 (a) operate as an admission by any Party that any material designated as  
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
12 contains or reflects trade secrets or any other type of confidential or proprietary  
13 information entitled to protection under applicable law;

14 (b) prejudice in any way the rights of any Party to object to the production of  
15 documents, electronically stored information and things it considers not subject to  
16 discovery, or operate as an admission by any Party that the restrictions and procedures set  
17 forth herein constitute adequate protection for any particular information deemed by any  
18 Party to be “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
19 ONLY” information;

20 (c) prejudice in any way the rights of any Party to object to the authenticity or  
21 admissibility into evidence of any document, testimony or the evidence subject to this  
22 Order;

23 (d) prejudice in any way the rights of any Party to seek a determination by the  
24 Court whether any discovery material or designated material should be subject to the  
25 terms of this Order;

26 (e) prejudice in any way the rights of any Party to petition the Court for a further  
27 protective order related to any purportedly “CONFIDENTIAL” or “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information;

(f) prejudice in any way the rights of any Party to petition the Court for permission to disclose or use particular “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information more broadly than would otherwise be permitted by the terms of this Order; or

(g) prevent any Party from agreeing to alter or waive the provisions or protections provided for herein with respect to any particular discovery material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information by that Party.

### 13. FINAL DISPOSITION

Within 60 calendar days of termination of the Action, as defined in Section 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material.

Notwithstanding this provision, Counsel are entitled to retain, for archival purposes, subject to the provisions of this Order, complete copies of, and copies of all exhibits to, all transcripts, pleading papers filed with the Court, motions and any responses and replies, expert reports, discovery requests and responses, correspondence, and their own work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

To the extent a Party requests the return of Protected Material from the Court after the termination of the Action, the Party shall file a motion seeking such relief.

14. VIOLATION

Any willful violation of this Order may be punished by civil or criminal contempt proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 17, 2022

**GREENBERG TRAURIG, LLP**

By: /s/ David S. Bloch

David S. Bloch (SBN: 184530)  
blochd@gtlaw.com

**GREENBERG TRAURIG, LLP**

101 Second St., Suite 2200  
San Francisco, CA 94105  
T: 415.590.5100 F: 415.707.2010

Colin W. Fraser (SBN: 266876)  
frasercw@gtlaw.com

**GREENBERG TRAURIG, LLP**

18565 Jamboree Road, Suite 500  
Irvine, CA 92612  
T: 949.732.6500 F: 949.732.6501

Maura E. Miller (*pro hac vice*)  
maura.miller@gtlaw.com

**GREENBERG TRAURIG, LLP**

One Vanderbilt Avenue  
New York, NY 10017  
T: 212.801.9372 F: 212.801.6400

*Attorneys for Plaintiff Dryft Sciences, LLC*

1 DATED: November 17, 2022

**CLARK HILL LLP**

2 By: /s/ Donald L. Ridge

3  
4 Donald L. Ridge (SBN: 132171)  
dridge@clarkhill.com

5 **CLARK HILL LLP**

6 555 South Flower Street 24th Floor  
7 Los Angeles, CA 90017  
T: 213.417.5117 F: 213.488.1178

8 Brian Byrne (State Bar No. 181362)

9 Zachary Tschida (State Bar No. 344994)

10 bbyrne@cgsh.com

11 ztschida@cgsh.com

12 **CLEARY GOTTlieb STEEN &  
HAMILTON LLP**

13 1841 Page Mill Road

14 Palo Alto, California 94304

15 Telephone: (650) 815-4110

16 Facsimile: (650) 815-4199

17 C. Lawrence Malm (*pro hac vice*)

18 Joseph Bruner (State Bar No. 332233)

19 lmalm@cgsh.com

20 jbruner@cgsh.com

21 **CLEARY GOTTlieb STEEN &  
HAMILTON LLP**

22 2112 Pennsylvania Ave., NW

23 Washington, DC 20037

24 Telephone: (202) 974-1500

25 Facsimile: (202) 974-1999

26 *Attorneys for Defendant*

27 *Swedish Match North America, LLC*

**SIGNATURE ATTESTATION PURSUANT TO L.R. 5-4.3.4(a)(2)(i)**

Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that the other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing

DATED: November 17, 2022

**GREENBERG TRAURIG, LLP**

By: /s/ David S. Bloch

David S. Bloch (SBN: 184530)

blochd@gtlaw.com

**GREENBERG TRAURIG, LLP**

101 Second St., Suite 2200

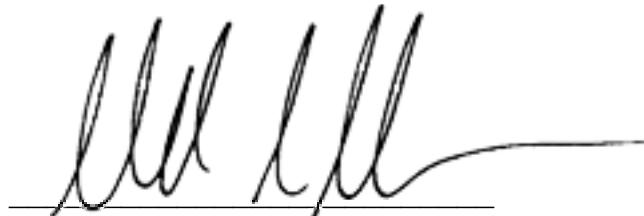
San Francisco, CA 94105

T: 415.590.5100 F: 415.707.2010

*Attorneys for Plaintiff Dryft Sciences, LLC*

**IT IS SO ORDERED.**

Dated: 11/18/2022



HONORABLE MICHAEL R. WILNER  
UNITED STATES MAGISTRATE JUDGE

Presented by:

/s/David S. Bloch

David S. Bloch

*Attorneys for Plaintiff Dryft Sciences, LLC*



EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [full name], of \_\_\_\_\_ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of \_\_\_\_\_ [insert case name and number]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [full name] of \_\_\_\_\_ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_